

**REMARKS/ARGUMENTS**

Reconsideration and allowance of this application are respectfully requested. Currently, claims 1-17 are pending in this application.

**Rejection Under 35 U.S.C. §101:**

Claims 1-12, 13 and 17 were rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. Applicant respectfully traverses this rejection. Claims 1-12, 13 and 17 are directed toward statutory subject matter since subject matter may be statutory if the claimed process is limited to a practical application of an abstract idea or mathematical algorithm in the technological arts. As described in MPEP section 2106, examples of this type of claimed statutory process include the following:

- A computerized method of optimally controlling transfer, storage and retrieval of data between cache and hard disk storage devices such that the most frequently used data is readily available.

- A method of controlling parallel processors to accomplish multi-tasking of several computing tasks to maximize computing efficiency. See, e.g., *In re Bernhart*, 417 F.2d 1395, 1400, 163 USPQ 611.616 (CCPA 1969).

- A method of making a word processor by storing an executable word processing application program in a general purpose digital computer's memory, and executing the stored program to impart word processing functionality to the general purpose digital computer by changing the state of the computer's arithmetic logic unit when program instructions of the word processing program are executed.

- A digital filtering process for removing noise from a digital signal comprising the steps of calculating a mathematical algorithm to produce a correction signal and subtracting the correction signal from the digital signal to remove the noise."

***BRISCOE et al.***  
***Application No. 09/674,720***  
***March 28, 2005***

**AMENDMENTS TO THE DRAWINGS**

The attached sheets of drawings include changes to Figs. 1 and 10. These sheets, which include Figs. 1 and 10, replace the original sheets including these figures. In Fig. 1, previously omitted label “6” has been added. In Fig. 10, an unneeded element has been deleted.

Attachment: Replacement Sheet(s)  
Annotated Sheet Showing Changes

Similar to the above examples of statutory processes, “A method of operating a communications network, including automatically varying at a customer terminal, depending on network loading as detected at the customer terminal, a tariff for network usage by the customer terminal,” as required by independent claim 1 and its dependents, is statutory. Similar comments apply to independent claims 13 and 17. A method of operating a communications network including automatically varying a tariff for network usage is clearly directed to a practical application of an abstract idea or mathematical algorithm in the technological arts.

**Rejections Under 35 U.S.C. §112:**

Claims 1-13 and 17 were rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. In particular, the Office Action held:

“Claim 1 recites the limitation of ‘communications network’. The preamble mentions the term ‘communications network’ which normally means a system of computers, terminals, and databases connected by communications lines’, but there is no step of ‘databases connected’ for the communications network. It is also not clear on step (a), step (b), and step (c). It appears that they should be related, but no positive language showing the relationship has been shown.”

As described in MPEP section 2173.04:

“Breadth of claim is not to be equated with indefiniteness. *In re Miller*, 441 F.2d 689, 169 USPQ 597

(CCPA 1971). If the scope of the subject matter embraced by the claims is clear, and if applicants have not otherwise indicated that they intend the invention to be of a scope different from that defined in the claims, then the claims comply with 35 U.S.C. 112, second paragraph.”

Accordingly, Applicant respectfully submits that the breadth of claim 1 is not to be equated with indefiniteness. Similar comments apply to claims 2-13 and 17. Applicant thus submits that claims 1-13 and 17 are in full conformance with 35 U.S.C. §112.

**Rejection Under 35 U.S.C. §102:**

Claims 1-17 were rejected under 35 U.S.C. §102(e) as allegedly being anticipated by Mashinsky (U.S. ‘926). Applicant respectfully traverses this rejection.

For a reference to anticipate a claim, each element must be found, either expressly or under principles of inherency, in the reference. Mashinsky fails to disclose each of the claimed elements. For example, Mashinsky fails to disclose “automatically varying at a customer terminal, depending on network loading as detected at the customer terminal, a tariff or network usage by the customer terminal,” as required by independent claim 1. Similar comments apply to independent claims 14, 15 and 16 and their respective dependents. Mashinsky also fails to disclose “applying to customer terminals a tariff for network usage, varying the tariff with time; at a customer terminal, selecting a period of time for

**BRISCOE et al.**  
**Application No. 09/674,720**  
**March 28, 2005**

which the tariff is to be fixed; and paying a premium depending on the duration of the said period,” as required by independent claim 13.

The Office Action apparently alleges that col. 2, lines 39-40 of Mashinsky discloses “automatically varying at a customer terminal...” Applicant respectfully disagrees. Col. 2, lines 39-40 of Mashinsky states “Service requests may be submitted manually by a systems manager at the service requestor, or automatically by a telecommunications node associated with the service requestor (emphasis added).” The telecommunications node referred to in the above-described section is certainly not a customer terminal, but a node located deep within the network and owned by a network operator.

The Office Action also alleges that col. 4, lines 3-6 of Mashinsky discloses “...depending on network loading as detected at the customer terminal.” Applicant respectfully disagrees. Col. 4, lines 3-6 of Mashinsky discloses “Called telephone 4 is similarly connected to a local telephone network 10 via a local hoop or another connection, schematically represented by line 12.” This portion of Mashinsky has absolutely nothing to do with determining network loading, let alone automatically varying a tariff depending on the network loading.

The Office Action also alleges that col. 5, lines 11-15 of Mashinsky discloses “...a tariff for network usage by the customer terminal.” Col. 5, lines 11-15 of Mashinsky states “A carrier’s-own-cost database 99 (one for each carrier associated with the node), which stores information regarding the internal cost to a

***BRISCOE et al.***  
***Application No. 09/674,720***  
***March 28, 2005***

carrier to connect a call from potential originating locations to potential terminating locations.” While this portion of Mashinsky discloses internal carrier cost data to connect a call from one location to another, this and all other portions of Mashinsky fail to disclose automatically varying a tariff for network usage by a customer terminal depending on network loading.

Accordingly, Applicant respectfully submits that claims 1-17 are not anticipated by Mashinsky and respectfully requests that the rejection of these claims under 35 U.S.C. §102 be withdrawn.

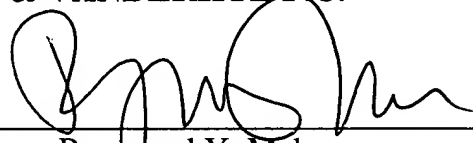
**Conclusion:**

Applicant believes that this entire application is in condition for allowance and respectfully requests a notice to this effect. If the Examiner has any questions or believes that an interview would further prosecution of this application, the Examiner is invited to telephone the undersigned.

Respectfully submitted,

**NIXON & VANDERHYE P.C.**

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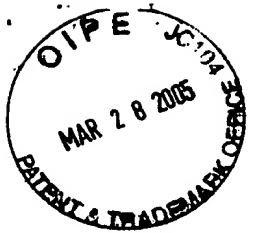
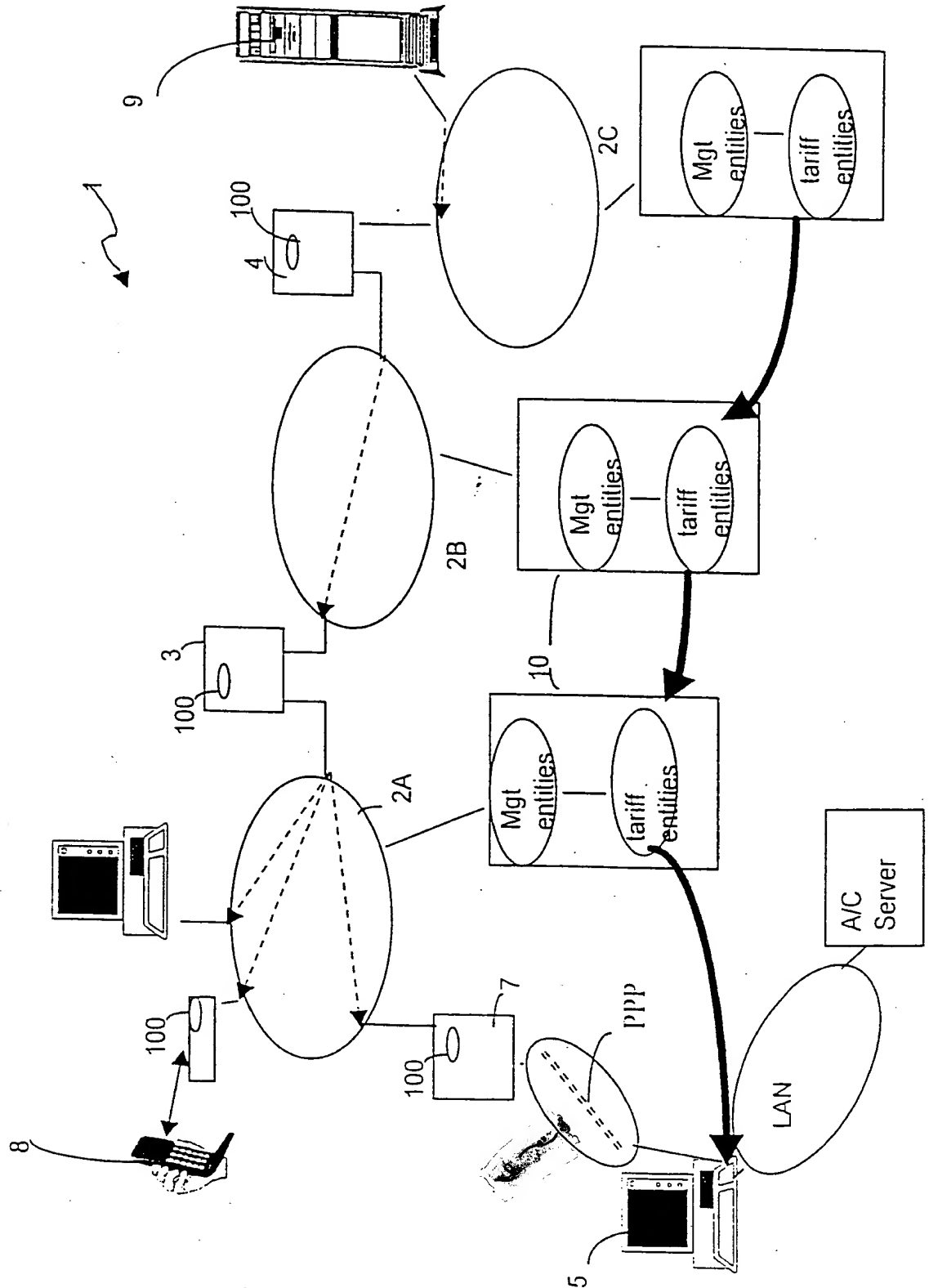


Figure 1



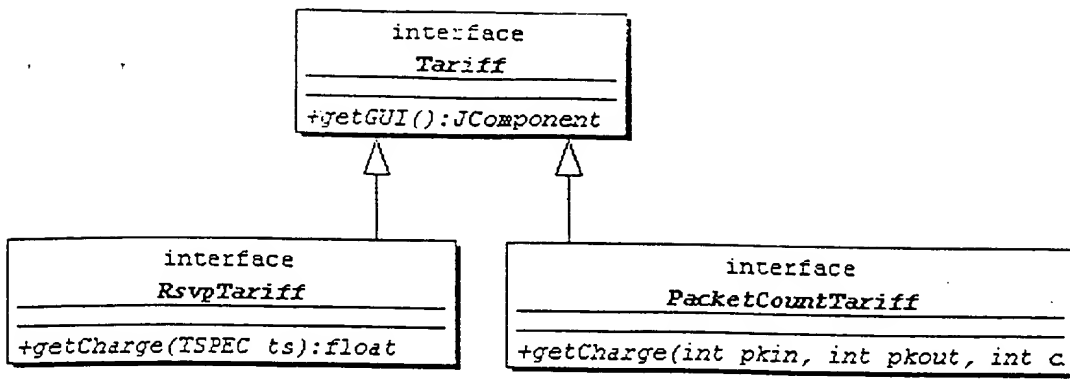


FIG 10  
(~~65792~~)